



MASSACHUSETTS DEPARTMENT OF REVENUE  
PERSONAL INCOME TAX  
FILING STATUS; LEGALLY SEPARATED

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**FACTS:**

Melissa, a calendar year taxpayer, separated from her husband in September, 1987. In October 1987, Melissa filed a complaint for divorce in a probate court and also applied to the court for a temporary support order for herself and her minor children. An order for such support issued shortly thereafter.

**ISSUE:**

What is Melissa's filing status for the 1987 tax year?

**DISCUSSION:**

For filing purposes, a taxpayer's marital status is generally determined at the close of the taxpayer's taxable year, G.L. c. 62, § 1(g), and an individual is considered married unless legally separated from his or her spouse under a decree [judgment] of divorce or of separate maintenance. *Id.*

While a complaint for divorce or separate maintenance is pending, and until a judgment of either issues and becomes final, the probate court may enter orders for support of a spouse and minor children under various sections of the General Laws. These orders are only temporary in nature, however; a "judgment of separate maintenance," on the other hand, must create a judicial separation and establish a permanent status for the future. *See, Gould v. Gould, 359 Mass. 29 (1971); See also, Boyer v. Commissioner of Internal Revenue, 732 F.2d 191 (D.C. Cir. 1984).* Temporary support orders do not meet these requirements; accordingly, a taxpayer who has only a temporary support order does not have a judgment of divorce or of separate maintenance and is still considered married.

Judgments of separate maintenance are extremely rare. They may, however, issue under c. 209, § 36 of the General Laws which permits a married person to convey real estate as if he or she were unmarried and prevents a surviving spouse from claiming a statutory forced share of a deceased spouse's estate. This section thus clearly contemplates a permanent change in the status of the parties, and parties having a judgment under this section will not be considered married. Such parties must file as single. In general, however, a person without a final judgment of divorce will be required to file as married for tax purposes.

**DIRECTIVE:**

Melissa has only a temporary support order granted her until her divorce becomes final. She does not have a judgment of separate maintenance and is, therefore, not "legally separated" for tax purposes. Melissa must file as married. If a joint return is to be filed, both spouses must sign. If Melissa cannot find her spouse, or cannot get him to sign a joint return with her, she must file as married filing separately.

**REFERENCE:**

G.L. c. 62, § 1(g); G.L. c. 209, § 36; *Boyer v. Commissioner of Internal Revenue, 732 F.2d 191 (D.C. Cir. 1984); Gould v. Gould, 359 Mass. 29 (1971).*

March 15, 1989

Stephen W. Kidder  
Commissioner of Revenue

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This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C.01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.